



Proposed Critical Habitat for Southern Resident Killer Whales

Questions & Answers

(June 2006)

Q. What is critical habitat?

The Endangered Species Act (ESA) defines critical habitat as specific areas: 1) within the geographical area occupied by the species at the time of listing, if they contain physical or biological features essential to conservation, and those features may require special management considerations or protection; and 2) outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation.

Q. How does critical habitat get designated?

The ESA requires that NOAA and the U.S. Fish and Wildlife Service designate critical habitat for species that have been listed as threatened or endangered. In so doing, the agencies must use the best scientific information available, in an open public process, within specific timeframes. Before designating critical habitat, careful consideration must be given to the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat. The Secretary of Commerce may exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless excluding the area will result in the extinction of the species concerned.

Q. Why propose to designate critical habitat now?

The ESA requires the agency to designate critical habitat at the time of listing, or within one year if critical habitat is not determinable at that time. On Nov. 15, 2005, NOAA Fisheries Service listed the Southern Resident killer whales as endangered under the ESA, and the agency is now ready to propose critical habitat for these animals.

Q. What happens once critical habitat is designated and how does it change what federal agencies must do to satisfy the ESA?

The ESA protects threatened and endangered species in several ways. Under Section 7, all *federal agencies* must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species, or destroy or adversely modify its *designated critical habitat*. These complementary requirements apply only to federal agency actions, and the latter only to habitat that has been designated. A critical habitat designation does not set up a preserve or refuge, and applies only when federal funding, permits or projects are involved. Critical habitat requirements do not apply to citizens whose actions do not involve a federal agency.

Many actions that adversely modify a species' critical habitat will also jeopardize its continued existence. In practice, we'll continue to be concerned about the same activities that harm killer whales and their habitat, regardless of whether that habitat is designated. We expect that where critical habitat is designated, it will more precisely focus our analysis on how the action will alter the habitat, and how that will affect the ability of the habitat to support the population's conservation.

Q. What are the physical or biological features essential to the conservation of Southern Resident killer whales?

Based on the natural history of the Southern Residents and their habitat needs, we've identified the following physical or biological features essential to conservation:

- (1) Water quality to support growth and development;
- (2) Prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth; and
- (3) Passage conditions to allow for migration, resting, and foraging.

Q. What areas did NOAA exclude from this proposal and why?

The ESA gives the Secretary of Commerce discretion to exclude areas from designation if he determines that the benefits of exclusion outweigh the benefits of designation. We're proposing to exclude military areas in Puget Sound because of the high priority on national security, the potential for critical habitat designation to have some impact on military readiness, and the fact that collectively, the military sites represent only a small percentage of the total habitat. Based on these considerations we concluded that the national security benefits of exclusion outweigh the conservation benefits of designation. We're not proposing to designate 18 military sites (112 square miles total) as critical habitat.

We're not proposing to exclude any areas based on economic impacts. We considered the endangered status of the whales, the uniqueness of their habitat, the fact that threats to habitat are a primary concern leading to the endangered finding, and that designation will enhance our ability to protect the habitat through Section 7 consultations. We concluded that the economic benefits of excluding each of the three critical habitat areas do not outweigh the conservation benefits.

Q. What are the estimated economic impacts of the proposed designation?

The annual net economic impact is estimated to be \$1-\$10.1 million. An economics reports accompanying the agency's decision gives details of the analysis.

Q. How can I get information about NOAA Fisheries' proposal?

Our proposal to designate critical habitat for Southern Resident killer whales is published in the *Federal Register* and available on our Website at www.nwr.noaa.gov. To fully understand the proposal and the analysis behind it, we suggest those wishing to comment read the analytical documents. These include:

- **A biological report describing the life history, distribution and habitat needs of the whales.** *Designation of Critical Habitat for Southern Resident Killer Whales: Biological Report*
- **An economics report describing how we estimated the economic impact of this proposal on different areas:** *Economic Impacts Associated with Potential Critical Habitat Designation for the Southern Resident Population of Killer Whales, Final Draft Report*
- **A report describing how we considered the biological importance and the economic and national security impacts to recommend the exclusion of particular areas:** *Designation of Critical Habitat for Southern Resident Killer Whales: Draft 4(b)(2) Report*

Q. How do I comment on the proposal and when are comments due?

All comments on this proposal must be received by no later than 5 p.m. (Pacific Daylight Time) on Aug. 14, 2006. There are several ways to submit comments, including via:

E-mail - Send an e-mail to: orcahabitat.nwr@noaa.gov. E-mail comments, with or without attachments, are limited to 5 megabytes.

Federal e-Rulemaking Portal - Go to <http://www.regulations.gov> and follow the instructions for submitting comments. To search rules by agency select "National Oceanic and Atmospheric Administration."

Mail - Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR, 97232-1274. You may also hand-deliver written comments to this address during normal business hours.

We have scheduled 2 public "open houses" on this proposal:

- July 12, 2006, 7:00 – 9:00 p.m. at the Seattle Aquarium, 1483 Alaskan Way, Seattle, Wash.
- July 13, 2006, 7:00 – 9:00 p.m. at the Whale Museum, 62 First St. N., Friday Harbor, Wash.

Q. What types of information would be most useful to NOAA Fisheries?

As noted in the proposed rule, we are particularly interested in:

(1) Maps and specific information describing the amount, distribution, and use type (e.g., feeding, migration, resting) of Southern Resident killer whales in inland and coastal waters, including shallow areas with less than 20 feet (6.1 m) of water;

(2) Information on the identification, location, and quality of physical or biological features which may be essential to the conservation of Southern Resident killer whales, including information on sound as a PCE;

(3) Information about potential impacts of designating any particular area, including the types of federal activities that may trigger an ESA Section 7 consultation and the possible modifications that may be required of those activities as a result of Section 7 consultation. In particular, we're seeking information on water-quality management activities that may trigger Section 7 consultation, potential modifications of those activities, and estimated costs of those modifications;

(4) Information on the benefits of designating any particular area of the proposed critical habitat;

(5) Information about the benefits of excluding particular areas from the critical habitat designation;

(6) Current or planned activities in the areas proposed for designation and their possible impacts on proposed critical habitat; and

(7) Any foreseeable economic or other potential impacts resulting from the proposed designations.

Q. What happens next?

In accordance with the ESA process, we plan to submit the final rule for publication in the *Federal Register* by November 2006. We'll hold public meetings, review all comments and any new information provided by the public and peer reviewers, and then incorporate any needed revisions into a final designation. Meanwhile, during the period between proposed and final rules, the ESA requires that each federal agency confer with NOAA Fisheries Service on any agency action that is likely to result in the destruction or adverse modification of critical habitat proposed for designation.